

GENERAL COUNSEL'S REPORT

June 22, 2016

- C. The Residence at Alive Hospice—Murfreesboro, Murfreesboro (Rutherford County), TN—CN1408-037A

Request for a 12 month extension from January 1, 2017 to January 1, 2018.

The project was previously approved November 19, 2014, by a 8-0 vote.

The establishment of a ten (10) bed residential hospice in Murfreesboro (Rutherford County). The facility will be located at unaddressed Lot 13, which lies between Williams Drive and Carl Adams Drive, and is bounded by DCI Dialysis Clinic and by the Murfreesboro Medical Clinic/Surgicenter property at the intersection of Carl Adams Drive and Garrison Drive. The facility will be licensed separately as a residential hospice but will operate under the existing provider number of Alive Hospice, Inc., a licensed and Medicare-certified home care organization providing hospice care. The estimated project cost is \$10,888,816.00.

The project has been delayed due to the capital funding campaign for charitable contributions. Groundbreaking is expected to occur in August 2016.



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May 27, 2016

James B. Christoffersen
General Counsel
Tennessee Health Services and Development Agency
502 Deaderick Street, 9th Floor
Andrew Jackson Building
Nashville, TN 37243-0200

Re: The Residence at Alive Hospice -- Murfreesboro
CN1408-037A

Dear Jim,

This is to request an extension of the expiration date of the above referenced CON from January 1, 2017 to January 1, 2018. This is the first request for an extension for this project.

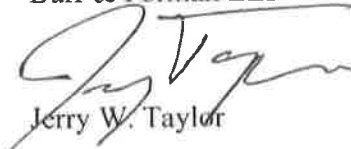
The reason for the requested extension relates primarily to the fact this project is being funded in large part through charitable contributions from Alive Hospice's numerous and generous donors. A capital campaign has been underway since the approval of the project, and the fund-raising goal is close to being achieved. Alive Hospice is not in a position to break ground on the facility until certain such benchmarks are reached.

The current estimated date for ground-breaking is August of 2016. However, in being a good steward of its funds, Alive Hospice does not want to incur the expense of site mobilization and ground breaking unless and until an extension of time is granted.

Please place this matter on the agenda for the June 22, 2016 meeting. I and other representatives of Alive Hospice will be there to answer questions and provide any additional information needed. A check in the amount of \$12,222.50 for the extension fee is submitted herewith. Thank you for your time and assistance.

Sincerely yours,

Burr & Forman LLP



Jerry W. Taylor

James B. Christoffersen
May 27, 2016
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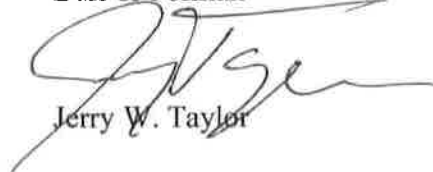
living apartments (70% of phase one or 126 apartments) must be pre-sold with 10% deposits in order to assure viability. The sales team has reached approximately 44% (or 55 10% apartment deposits) of its goal, and those efforts are continuing. 17 garden home lots have been sold in addition to the 55 apartments and 7 couples will start building their garden homes this summer. In March of this year, Retirement Companies of America ("RCA") retained the services of Greystone, a national developer and manager of Senior Living communities, to assist them in the areas of marketing and finance. This added bench strength has already had an impact on the pace of sales and interest in financing the project. In addition, a financing package including both public and private financing has to be negotiated and closed. To date, two well-known national issuers of bonds (HJ Sims and Ziegler) have expressed interest in financing the project.

The current best estimate as to ground-breaking is as follows: Garden Homes: ground-breaking 3rd Quarter of 2016; Skilled Nursing Facility: ground-breaking 1st Quarter of 2017; Senior Apartments and Clubhouse: ground-breaking 3rd Quarter of 2017. This estimated schedule should permit the SNF to be completed by the 1st Quarter of 2018, but an additional cushion is needed to allow for unknown contingencies and the licensure survey.

Please place this matter on the agenda for the June 22, 2016 Agency meeting. I and other representatives will be there to answer questions and provide additional information as needed. A check for the two extensions in the total amount of \$16,372.48 is submitted herewith (\$10,473.28 for CN1303-008A and \$5,899.20 for CN1311-045A). Please let me know if we have miscalculated the fee and we will be glad to rectify that. Thank you for your assistance.

Sincerely yours,

Burr & Forman LLP



Jerry W. Taylor

Melanie Hill

Subject: FW: The Residence at Alive Hospice-Murfreesboro, Murfreesboro (Rutherford County), TN-CN 1408-37A

From: Taylor, Jerry [mailto:jtaylor@burr.com]

Sent: Tuesday, June 14, 2016 12:00 PM

To: Melanie Hill

Cc: Jim Christoffersen; Mark Ausbrooks

Subject: RE: The Residence at Alive Hospice-Murfreesboro, Murfreesboro (Rutherford County), TN-CN 1408-37A

Melanie,

The answer to your question regarding the \$1.5 million dollar settlement is both "yes" and "no." The payment of the settlement amount in and of itself did not delay the project. That was paid out of assets on hand. What did contribute to the delay was the lengthy OIG investigation, which lasted from January 2013 to September 2015. The investigation was confidential and could not be publicly disclosed by either the OIG or Alive. It was not made public until September of 2015.

As stated in the application, the intent was to fund most of the project cost through donations raised in a specific capital campaign. In the absence of the investigation, Alive could have kicked off the campaign almost immediately following CON approval in November of 2014. However, in keeping with principals of ethical fund-raising, Alive did not want to conduct a capital campaign with potential donors being unaware of the investigation. To do so could have raised questions as to the integrity of Alive Hospice. Accordingly, Alive waited until the investigation was completed and made public before it kicked-off the capital campaign, which obviously contributed to the delay. In light of the late start, the capital campaign is going very well, and as far as Alive is aware, the OIG investigation and settlement has had no significant negative impact on the fund-raising efforts.

Alive Hospice wishes to re-affirm its absolute commitment to the completion and implementation of this project. The need for the service and facility is stronger than ever. Alive has already invested approximately \$1.7 million in out-of pocket costs towards the project.

Thank you for your time and attention to this matter. Please let me know if you have additional question or if additional information is needed. We look forward to addressing the Agency regarding this request on June 22.

On Jun 7, 2016, at 6:20 PM, Melanie Hill <Melanie.Hill@tn.gov> wrote:

Jerry,

Please see the excerpt from the CON application below regarding the financing for the project (**Excerpt from CON application Staff Summary, pp. 12, 14-15, November 19, 2014**).

Has the over \$ 1.5 million Alive Hospice, Inc. paid to the federal government to resolve the alleged overbilling of Medicare and TennCare for hospice services delayed the implementation of the project?

<https://www.justice.gov/usao-mdtn/pr/alive-hospice-pays-us-and-tennessee-over-15-million-resolve-false-claims-act-lawsuit>

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Project Cost

Major costs of the \$10,888,816.00 total project cost are:

- Facility Lease-\$10,384,371 or 95.4% of the total project cost. This assumes the applicant will pay annual lease expense over a twenty year period. The applicant will have a purchase option during years two through five of the lease. If the applicant exercises the purchase option the price of the leased premises will be \$4,000,000. The applicant has indicated that if not enough funds are raised to purchase the premises then annual lease payment will be made for the remainder of the lease.

A letter dated August 14, 2014 was provided by a Principal of Earl Swensson Associates' Inc. confirming the construction costs and compliance with all applicable building and safety codes of the project.

The estimated construction cost per square foot is approximately \$210.00. There is not enough data available from previously approved residential hospice projects for comparison purposes. The applicant noted that the \$210 was above the 3rd quartile for previously approved nursing home projects and below the 1st quartile for previously approved hospital projects.

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Financing

The applicant expects implementation costs, estimated at \$504,445 will be provided from Alive's current assets. The applicant expects most of the costs will be provided by new community donations raised by a capital campaign.

Tie applicant's fundraising history is presented in the table below:

| Year | Total Contributions | Unrestricted Amount |
|--------|---------------------|---------------------|
| FY2011 | \$1,686,000 | \$1,305,000 |
| FY2012 | \$1,613,000 | \$1,385,000 |
| FY2013 | \$2,029,000 | \$1,551,000 |

Source: CN1008-037

Note to Agency members: The applicant was asked by HSDA staff in a request for supplemental information to provide letters from

community donors expressing an interest in donating to the proposed project including the amount of expected donation. The applicant responded that there have been substantial informal commitments, but not written commitments. The informal commitments are personal communications that are confidential and not to be made public.

According to Alive Hospice Inc.'s audited financial statements on December 31, 2013 there were cash and cash equivalents of \$7,481,233, current assets of \$10,970,775, and current liabilities of \$2,772,928 resulting in a current ratio of 3.96:1.

Melanie

Melanie M. Hill, Executive Director
Tennessee Health Services and Development Agency
Andrew Jackson Building, 9th Floor
502 Deaderick Street
Nashville, TN 37243

www.tn.gov/hsda
Phone: 615-741-2364
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State of Tennessee

Health Services and Development Agency

Andrew Jackson, 9th Floor, 502 Deaderick Street, Nashville, TN 37243
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December 17, 2014

John L. Wellborn, Consultant
Development Support Services
4219 Hillsboro Road, suite 210
Nashville, TN 37215

RE: The Residence at Alive Hospice—Murfreesboro - CN1408-037A

Dear Mr. Wellborn:

As referenced in our recent letter, please find enclosed your Certificate of Need for the above-referenced application that was approved at the November 19, 2014 meeting of the Tennessee Health Services and Development Agency.

The Health Services and Development Agency Rules require that an Annual Progress Report be submitted each year and a Final Project Report form is to be submitted within ninety (90) days after completion of a project which shall include completion date, final costs, and other relevant information in regards to the project, pursuant to Public Acts 2002, Chapter No. 780, § 16-11-1609(d). Also required is the registration of certain medical equipment pursuant to Tennessee Code Annotated § 68-11-1607(i), which states "*The owners of the following types of equipment shall register such equipment with the health services and development agency: computerized axial tomographers, lithotripters, magnetic resonance imagers, linear accelerators and positron emission tomography.*" "*The survey shall include but not limited to the identification of the equipment and utilization data according to source of payment.*"

The aforementioned forms can be found on the Agency's website at www.tennessee.gov/HSDA. Should you have any questions or require further information regarding this Certificate, please do not hesitate to contact this office.

Sincerely,

Melanie M. Hill
Executive Director

MMH/

cc: Trent Sansing, Division of Health Statistics, Office of Policy, Planning & Assessment
Ann R. Reed, Health Care Facilities - Licensure
Bill Harmon, Director of Engineering, Health Care Facilities

STATE OF TENNESSEE
Health Services and Development Agency



Certificate of Need No. **CN1408-037A** is hereby granted under the provisions of T.C.A. § 68-11-1601, *et seq.*, and rules and regulations issued thereunder by this Agency.

To: **Alive Hospice, Inc.**
1718 Patterson Street
Nashville, TN 37203

For: **The Residence at Alive Hospice—Murfreesboro**

This Certificate is issued for: The establishment of a ten (10) bed residential hospice in Murfreesboro (Rutherford County). The facility will be licensed separately as a residential hospice but will operate under the existing provider number of Alive Hospice, Inc., a licensed and Medicare-certified home care organization providing hospice care.

On the premises located at: **Unaddressed Lot 13, between Williams Drive and**
Carl Adams Drive
Murfreesboro (Rutherford County), TN 37129

For an estimated project cost of: **\$10,888,816.00**

The Expiration Date for this Certificate of Need is

January 1, 2017

or upon completion of the action for which the Certificate of Need was granted, whichever occurs first. After the expiration date, this Certificate of Need is null and void.

Date Approved: **November 19, 2014**



Chairman

Date Issued: **December 17, 2014**



Executive Director